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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-123

13 **LINDA ANN KELLY**  
4709 Whistlewood Court  
Antelope, CA 95843

**A C C U S A T I O N**

14 **Registered Nurse License No. 650451**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),  
21 Department of Consumer Affairs.

22 2. On or about December 31, 2004, the Board issued Registered Nurse License Number  
23 650451 to Linda Ann Kelly ("Respondent"). Respondent's registered nurse license was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on November  
25 30, 2010, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that  
28 the Board may discipline any licensee, including a licensee holding a temporary or an inactive

1 .license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing  
2 Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not  
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision  
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed  
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct . . .

11 6. Code section 2762 states, in pertinent part:

12 In addition to other acts constituting unprofessional conduct within the  
13 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
person licensed under this chapter to do any of the following:

14 (a) Obtain or possess in violation of law, or prescribe, or except as  
15 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
16 himself or herself, or furnish or administer to another, any controlled substance as  
defined in Division 10 (commencing with Section 11000) of the Health and Safety  
Code or any dangerous drug or dangerous device as defined in Section 4022.

17 . . . .

18 (e) Falsify, or make grossly incorrect, grossly inconsistent, or  
19 unintelligible entries in any hospital, patient, or other record pertaining to the  
substances described in subdivision (a) of this section.

20 7. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that

21 No person shall obtain or attempt to obtain controlled substances, or  
22 procure or attempt to procure the administration of or prescription for controlled  
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

### 23 COST RECOVERY

24 8. Code section 125.3 provides, in pertinent part, that the Board may request the  
25 administrative law judge to direct a licensee found to have committed a violation or violations of  
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
27 enforcement of the case.

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**CONTROLLED SUBSTANCES AT ISSUE**

9. "Morphine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

10. "Demerol", a brand of meperidine hydrochloride, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17).

11. "Norco", a combination drug containing hydrocodone bitartrate 10 mg and acetaminophen 325 mg, is a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4).

**FIRST CAUSE FOR DISCIPLINE**

**(Diversion of Controlled Substances)**

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that on or about May 16, 2007, and June 28, 2007, while employed and on duty as a registered nurse in the Post Partum unit at Mercy General Hospital, Sacramento, California, Respondent obtained the controlled substances morphine, Demerol, and Norco. Respondent obtained such substances by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a). The circumstances are as follows:

a. On the dates indicated above, Respondent removed various quantities of morphine, Demerol, and Norco from the Omnicell automated dispensing system<sup>1</sup> (hereinafter "Omnicell") for patients A, B, and C. However, Respondent either failed to chart the administration of the medications in the patients' Medication Administration Records (MAR) or falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in the MAR's to conceal her diversion of the morphine, Demerol, and Norco, as more particularly set forth in paragraph 13 below.

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<sup>1</sup> Omnicell is a medication dispensing system. This system automates the distribution, tracking, management and control of medications. The Omnicell machines dispense unit doses of drugs from locked drawers when a staff member accesses the machine by fingerprint identification or overrides the machine by entering a recognized PIN.

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1 **Patient C:**

2 d. On June 28, 2007, at 2130 hours, Respondent removed 1 tablet of Norco from the  
3 Omnicell for the patient, but did not chart the administration of the Norco on the patient's MAR  
4 and/or otherwise account for the disposition of the 1 tablet of Norco.

5 **PRAYER**


6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
7 and that following the hearing, the Board of Registered Nursing issue a decision:

8 1. Revoking or suspending Registered Nurse License Number 650451, issued to Linda  
9 Ann Kelly;

10 2. Ordering Linda Ann Kelly to pay the Board of Registered Nursing the reasonable  
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
12 Code section 125.3;

13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 8/28/09

  
LOUISE R. BAILEY, M.Ed., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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